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UNITED STATES OF AMERICA,)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 98A00004
)	
MATTIE GIEFER, AN INDIVIDUAL)	Judge Robert L. Barton, Jr.
D/b/a MATTIE GIEFER ROOFING,)	
Respondent.)	
)	

(December 12, 1997)

I explained that this conference was not a hearing on the allegations made in this case. The purpose of the conference was to discuss the parties' positions and to narrow the issues that are in dispute. Count I of the Complaint alleges that Respondent hired one named individual, Jesus Gonzalez-Ruiz, after November 6, 1986, that Mr. Gonzalez was an alien not authorized for employment in the United States, and that Respondent hired or continued to employ Mr. Gonzalez knowing that he was unauthorized to work in the United States. See Compl. ¶¶ I.A-E. Complainant alleges in Count II that Respondent failed to prepare employment eligibility verification forms (I-9 forms) for twelve named individuals, or, in the alternative, that Respondent failed to make the I-9 forms for those people available for inspection at the time of the scheduled inspection. See id. ¶¶ II.A-E.

Respondent filed his Answer to the Complaint on November 12, 1997. With respect to Count I, Respondent admits that he hired Mr. Gonzalez after November 6, 1986, but that he lacks sufficient information to admit or deny that Mr. Gonzalez was unauthorized to work in the United States. See Ans. ¶ 2. Furthermore, Respondent denies that he was aware Mr. Gonzalez was an illegal alien. See id. With respect to Count II, Respondent admits that he hired the twelve listed individuals after November 6, 1986, but states that he was not aware of the need to prepare I-9 forms

for them, and that he was not aware that it was necessary to present those forms for inspection. See id. ¶ 5.

I asked Mr. Cozad what evidence he has of the allegations in Count I. Mr. Cozad said that INS Agent Floyd Jennings spoke with Mr. Giefer on the telephone on July 31, 1997, and that, during that conversation, Mr. Giefer said that he was paying Mr. Gonzalez through a third person, that he was giving Mr. Gonzalez a place to live in a trailer on his property, and that he knew Mr. Gonzalez was not authorized to work in the United States. Mr. Cozad said the substance of the telephone conversation was reduced to writing on a form G-166. As evidence of Mr. Gonzalez' unauthorized status, Mr. Cozad said he has a record of sworn statement, form I-213, and that Mr. Gonzalez was voluntarily returned to Mexico.

Mr. Giefer said that he allowed Mr. Gonzalez to work for him for a period of three to five days around the last of March or beginning of April this year. Mr. Giefer said that Mr. Gonzalez told him he was desperate for work, but that he did not have his documents with him and that his documents were at a location in another town. Mr. Giefer said he allowed Mr. Gonzalez to work, but only on the condition that he bring his documents as soon as possible.

Mr. Giefer agreed that he spoke with Mr. Jennings, but said that he did not tell Mr. Jennings that he knew Mr. Gonzalez was unauthorized. Mr. Giefer said he did not know at the time of hire that Mr. Gonzalez was unauthorized and that he did not learn that information during the time Mr. Gonzalez was working for him. Mr. Giefer said he gave money to Mr. Gonzalez through a third person because Mr. Gonzalez had not yet presented his documents.

Mr. Giefer said he made Mr. Gonzalez stop working because he had not presented his documents, and that he would not allow Mr. Gonzalez to work again until he presented his documents, but that Mr. Gonzalez and a second person continued to live in his trailer. Mr. Cozad said Mr. Gonzalez was arrested on April 29, 1997, at 12:35 a.m. Mr. Giefer said he has no information that Mr. Gonzalez was not arrested and returned to Mexico. Mr. Giefer stated that, after Mr. Gonzalez' arrest, Mr. Jennings asked whether he thought Mr. Gonzalez was an illegal alien. Mr. Giefer clarified that he responded that, under the circumstances, Mr. Gonzalez probably was an illegal alien, but that he did not say that he either knew or believed that Mr. Gonzalez was an illegal alien while Mr. Gonzalez was working for him.

After further discussion of the issues in this case, I talked with the parties about the possibility of settling this case. The parties engaged in settlement discussions and orally agreed on terms of settlement. Under those terms, Respondent will pay Complainant a total of \$2,000. That sum will be paid over four months at \$500 per month, with no interest. Mr. Cozad said Complainant would not expect the first payment to be made until February 1998.

Mr. Cozad said he will prepare the appropriate papers and send them within the next ten days to Mr. Giefer for his review and signature. I told Mr. Giefer that, if he has any questions about the written settlement agreement after he receives the papers, he should call Mr. Cozad and discuss those questions with him. After Mr. Giefer reviews and signs the settlement papers, he should send them back to Mr. Cozad. Mr. Cozad said he will try to get the signed papers to my office in the first week of January 1998.

If either party objects to any part of this Report on the ground that it does not accurately reflect the statements made at the conference, such objection shall be made in writing and filed and served on or before December 22, 1997.

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 1997, I have served the foregoing Prehearing Conference Report on the following persons at the addresses shown, by first class mail, unless otherwise noted:

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